



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2022-0029; FXES11140100000-223-FF01E0000]

Notice of Intent to Prepare an Environmental Impact Statement for the Elliott State Research Forest Habitat Conservation Plan in Coos and Douglas Counties, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; virtual public scoping meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), provide this notice to open a public scoping period and announce a virtual public scoping meeting, in accordance with requirements of the National Environmental Policy Act and its implementing regulations. The Oregon Department of State Lands is preparing a habitat conservation plan (HCP) in support of its anticipated applications for incidental take permits under the Endangered Species Act for activities it will undertake in managing the Elliott State Forest in southwestern Oregon. We intend to prepare an environmental impact statement to evaluate the impacts on the human environment related to the proposed issuance of these permits and implementation of the HCP.

DATES: *Submitting Comments:* We will accept online or hardcopy comments.

Hardcopy comments must be received or postmarked on or before **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

(See **ADDRESSES**.) Comments submitted online at <https://www.regulations.gov/> must be received by 11:59 p.m. Eastern Time on **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

Public Meeting: FWS will hold a public scoping meeting during the scoping period. To help protect the public and limit the spread of the COVID-19 virus, the public meeting will be held virtually at the following time:

- May 16, 2022, from 6 p.m. to 8 p.m.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Internet:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R1-ES-2022-0029.
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS-R1-ES-2022-0029; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

For additional information about submitting comments, see **Public Scoping Process** under **SUPPLEMENTARY INFORMATION**.

Public Meeting: A link and access instructions to the virtual scoping meeting will be posted to <https://www.fws.gov/office/oregon-fish-and-wildlife> at least one week prior to the public meeting date.

FOR FURTHER INFORMATION CONTACT: Shauna Everett, by telephone at 503-231-6949, or by email at shauna_everett@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposed Action

In accordance with section 10(a)(2)(A) of the Endangered Species Act (ESA), Oregon Department of State Lands (ODSL, or the applicant) intends to submit the draft Elliott State Research Forest Habitat Conservation Plan (ESRF HCP) to the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (together, the Services) in support of applications for incidental take permits (ITPs) for the threatened

northern spotted owl (*Strix occidentalis*), threatened marbled murrelet (*Brachyramphus marmoratus*), and threatened Oregon Coast coho (*Oncorhynchus kisutch*) (together, the covered species). The requested ITPs would authorize incidental take of covered species likely to result from research and management related activities on the Elliott State Forest, located in Coos and Douglas Counties in southwestern Oregon, including timber removal associated with a suite of forest management prescriptions and associated infrastructure maintenance. The HCP will include minimization and mitigation measures to offset the impacts of the taking on covered species.

To meet our requirements under NEPA, we intend to prepare a draft environmental impact statement (DEIS) and, later, a final environmental impact statement (FEIS), to evaluate the effects on the human environment of issuing the requested permit and ODSL's implementation of the ESRF HCP. NMFS is a cooperating agency and intends to adopt the EIS to address the impacts of issuing an ITP addressing the listed species under its jurisdiction (Oregon Coast coho salmon).

ODSL's goals are to implement forest management activities on the Elliott State Forest to create a managed landscape where experimentation can occur. The goal of research on the Elliott State Forest is to advance more sustainable forest management practices through the application of a systems-based approach investigating the integration of intensively managed forests, forest reserves, dynamically managed complex forests, and the aquatic and riparian ecosystems that flow within them. ODSL's ESRF HCP conservation strategy also includes goals specific to offsetting impacts to the covered species. FWS has taken these goals into account in establishing the purpose and need for the proposed action, which are (1) to review the applicant's ITP request; and (2) to either grant, grant with conditions, or deny the ITP request in compliance with FWS's authority under applicable law, including, without limitation, section 10(a) of the ESA and applicable ESA implementing regulations.

Preliminary Proposed Action and Alternatives

Consistent with 40 CFR 1501.9(d)(2), the preliminary description of the proposed action is issuance of ITPs authorizing incidental take of covered species in association with covered activities and HCP implementation. NMFS and FWS will review the applications to determine if ESA section 10(a) permit issuance criteria and all other legal requirements related to permit issuance are met before making separate permit decisions.

The DEIS will include a reasonable range of alternatives, which may include but are not limited to variations in the level, location, and type of minimization and mitigation approaches; the scope or types of covered activities; limitations in forest management in covered species habitat; variation in the length of the permit term; adding or removing covered species or the level of allowable take; and variations in conservation implementation and effectiveness monitoring. Additionally, a No Action Alternative will be included. Under the No Action Alternative, no ITPs would be issued and ODSL would continue to manage the Elliott State Forest under the current management regime, which avoids take of listed species from research and management activities on the Elliott State Forest.

Background

Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1532(19)). The term “harm” is defined by regulations as “an act which actually kills or injures wildlife.” “Such act may include significant habitat modification or degradation where it actually kills or injures wildlife

by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering” (50 CFR 17.3; 50 CFR 222.102).

Under section 10(a) of the ESA, the Services may issue permits to authorize incidental take of listed fish and wildlife species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicant will ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicant will carry out any other measures the Services may require as being necessary or appropriate for the purposes of the HCP.

Elliott State Research Forest Habitat Conservation Plan

ODSL intends to implement the ESRF HCP to cover a variety of research and management activities, including timber removal associated with a suite of forest management prescriptions and associated infrastructure maintenance. The ESRF HCP includes measures to minimize and mitigate impacts of the taking on covered species. ODSL is expected to request 80-year ITPs from FWS and NMFS, respectively.

Covered Activities

The proposed covered activities will likely include:

- **Research Treatments:** Research actions, harvest activities, and stand management activities that will be utilized to maintain the research platform.

- **Research Projects:** Short, long-term, active, or passive potential research projects related to climate change, social economic and recreation, aquatic and terrestrial systems, forest practices and management, fire and disturbance, and fish and wildlife habitat in managed forests.
- **Supporting Management Activities:** Activities used to facilitate stand management activities, including mechanical vegetation control and controlled burning.
- **Supporting Infrastructure:** Infrastructure needed to facilitate implementation of the research platform and programs, including roads, landings, drainage structures, quarries, and communication sites and lookouts.
- **HCP Implementation Activities:** Activities identified in the conservation strategy and monitoring program that may result in short-term effects on covered species.

Covered Species

The species proposed for coverage under the ESRF HCP and ITPs will likely include the northern spotted owl, marbled murrelet, and Oregon Coast coho salmon. Each of the covered species is known to occur on the Elliott State Forest. The draft ESRF HCP will include an analysis of impacts to covered species and methodology for estimating and quantifying take and related conservation outcomes over time, and will propose limits on impacts resulting from covered activities.

Measures to minimize and mitigate impacts on covered species will be described in the HCP for each species as conservation measures and conditions on covered activities, guided by goals and objectives in the conservation strategy of the HCP. These measures would be systematically implemented and monitored for success. Impacts would be offset by a system of reserve areas. Minimization and mitigation measures are

subject to adaptive management to ensure their effectiveness, and to ensure achievement of the ESRF HCP's biological goals and objectives.

The ESRF HCP will include funding information and assurances, monitoring requirements, adaptive management, and changed circumstance provisions to help ensure conservation outcomes for the covered species. Annual reports would confirm the amount, type, and location of impacts and mitigation, as well as the status of monitoring, adaptive management, changed circumstances, and funding.

Summary of Expected Impacts

The DEIS will identify and describe the effects of the proposed Federal action on the human environment that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action. This includes effects that occur at the same time and place as the proposed action or alternatives and effects that are later in time or farther removed in distance from the proposed action or alternatives. Expected impacts may include, but are not limited to, positive and negative impacts to the covered species and critical habitat, geology and soils, air quality, water resources, other biological resources, health and safety, land use, recreation, aesthetics, historical and cultural resources, and socioeconomics.

The analysis will consider the adequacy of each alternative to maintain or enhance the status of the covered species at appropriate scales, in light of the expected effects and other best available information. Impacts to air quality, water resources, and other biological resources, such as fish, wildlife, and forest ecosystem, are expected to include some negative impacts from the research and management activities that are minimized and or mitigated at the landscape level through application of applicable law, including local and State regulations, and implementation of conservation strategies under each alternative. The conservation programs described in the action alternatives may serve to offset or partially offset impacts on air quality, water resources, and other biological

resources at the landscape scale, though these actions would be targeted at offsetting impacts to covered species. Localized positive and negative impacts to recreation, aesthetics, and historical and cultural resources may result from HCP implementation due to the expected changes in forests from the research and management-related activities (covered activities).

Anticipated Permits and Authorizations

The following permits, consultations, or other authorizations are anticipated to be required in order to enable the Services to proceed with issuance of the ITPs:

- ESA Section 7 consultations, ESA Section 10 findings;
- Magnuson-Stevens Fishery Conservation and Management Act consultation;
- Tribal consultations; and
- National Historic Preservation Act compliance.

Related Actions

Oregon Department of Forestry (ODF) has also applied for ITPs from FWS and NMFS and is currently preparing a Western Oregon State Forests HCP (WOHCP) to include 17 species (including all three species covered under the ESRF HCP). A DEIS and draft HCP were made available to the public on March 18, 2022 (87 FR 15383).

The proposed WOHCP permit area includes all State forest lands west of the crest of the Cascade Range that are owned by the Oregon Board of Forestry and managed by ODF, and also includes some Common School Fund Lands owned by ODSL but managed by ODF. The plan area of the ESRF HCP overlaps with the permit area of the WOHCP. The overlap consists of 8,897 acres that are Oregon Board of Forestry lands inside the Elliott State Forest boundary and 915 acres of other DSL lands adjacent to the ESRF. These lands would be covered by the WOHCP, if approved. However, if any of the Oregon Board of Forestry lands were later transferred to ODSL, they could be covered instead by the ESRF HCP.

Schedule for the Decision-Making Process

FWS will conduct an environmental review to analyze the effects of the proposed permit actions, along with other alternatives considered and the associated impacts of each alternative for the development of the DEIS. Following completion of the environmental review, the Services will publish a notice of availability and request for public comments on the DEIS and the draft HCP submitted with the ITP applications. FWS expects to make the DEIS and draft HCP available to the public in Winter 2022-2023. After public review and comment, FWS and NMFS will evaluate the permit applications, associated documents, and any comments received, to determine whether the requirements of section 10(a)(1) of the ESA are met. FWS and NMFS will also evaluate whether issuance of the requested ITPs would comply with section 7(a)(2) of the ESA. FWS expects to make the FEIS and final HCP available to the public in Summer 2023. At least 30 days after the FEIS is available, the Services' records of decision will be completed in accordance with applicable timeframes established in 40 CFR 1506.11. If appropriate, the Services would issue the ITPs after the issuance of the records of decision. If issued, the permits may include such terms and conditions deemed necessary or appropriate to carry out the purposes of the permit and the conservation plan.

Public Scoping Process

Virtual Public Meeting

This notice of intent initiates the scoping process, which aids in the development of the EIS.

To help protect the public and limit the spread of the COVID-19 virus, the public scoping meeting will be conducted online to accommodate best practices and local guidelines in place at the time this notice was prepared. See **DATES** and **ADDRESSES** for the date and time of the virtual public scoping meeting. The virtual public scoping meeting will provide ODSL and FWS with an opportunity to present to the public

information pertinent to the ESRF HCP, and for the public to ask questions on the scope of issues and alternatives that FWS should consider when preparing the EIS. No opportunity for oral comments will be provided. Written comments may be submitted by the methods listed in **ADDRESSES**.

Reasonable Accommodations

Persons needing reasonable accommodations in order to attend and participate in the virtual public scoping meeting should contact the FWS's Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) as soon as possible. In order to allow sufficient time to process requests, please make contact no later than one week before the desired public meeting. Information regarding this proposed action is available in alternative formats upon request.

Request for Information

We request comments on the proposed action, concerning the scope of the analysis and identification of relevant information, studies, and analyses from the public; affected Federal, State, Tribal, and local governments, agencies, and offices; the scientific community; industry; or any other interested party. We will consider these comments in developing the DEIS. Specifically, we seek:

1. Biological information, analysis and relevant data concerning the covered species and other wildlife;
2. Potential effects that the proposed permit action could have on the covered species, and other endangered or threatened species, and their associated ecological communities or habitats;
3. Potential effects that the proposed permit action could have on other aspects of the human environment, including ecological, aesthetic, historic, cultural, economic, social, environmental justice, or health;

4. Other possible reasonable alternatives to the proposed permit action that FWS should consider, including additional or alternative avoidance, minimization, and mitigation measures;
5. The presence of historic properties—including archaeological sites, buildings, and structures; historic events; sacred and traditional areas; and other historic preservation concerns—in the proposed plan and permit area, which are required to be considered in project planning by the National Historic Preservation Act;
6. Information on other current or planned activities in, or in the vicinity of, the Elliott State Forest and their possible impacts on the covered species, including any connected actions that are closely related and should be discussed in the same DEIS; and
7. Other information relevant to the ESRF HCP and its impacts on the human environment.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Comments and materials we receive, as well as supporting documentation we use

in preparing the DEIS, will be available for public inspection online in Docket No. FWS-R1-ES-2022-0029, at <https://www.regulations.gov/> (see **FOR FURTHER INFORMATION CONTACT**).

Next Steps

Once the DEIS is prepared, there will be further opportunity for comment on this proposed permit action through an additional public comment period.

Lead and Cooperating Agencies

FWS is the lead agency for the NEPA process. NMFS is a cooperating agency in the NEPA process. FWS welcomes inquiries from other Federal, State, or Tribal, or local agencies potentially interested in being a cooperating agency for the NEPA process.

Decision Makers and Nature of Decision To Be Made

The decision makers are the FWS Regional Director of the Pacific Region and the NMFS West Coast Regional Administrator. If, after publication of the record(s) of decision, the agencies determine that all requirements are met for ITP issuance, the decision makers will issue separate decisions on the requested ITPs.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1539(c)) and NEPA regulations on the publication of a notice of intent to issue an EIS (40 CFR 1501.9(d)).

Hugh Morrison,
Deputy Regional Director,
U.S. Fish and Wildlife Service.